

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JUSTIN MOSER,

Case No. _____

Plaintiff,

v.

ENVIRONMENT STONEWORKS

and

WINSOR STAFFING

Defendants.

COMPLAINT — CIVIL ACTION

And now Plaintiff, Justin Moser, by and through his undersigned counsel, files this Complaint and avers as follows:

I. PARTIES AND JURISDICTION

1. Plaintiff, Justin Moser, is an adult individual and citizen of the Commonwealth of Pennsylvania, who resides at 404 Main Street, Pottsville, PA 17901, in the County of Schuylkill.
2. Defendant, Environmental Stoneworks, employed Plaintiff at all times relevant hereto. This Defendant has a registered office address and principal place of business at 98 Pheasant Run Road, Orwigsburg, PA 17961.
3. Defendant, Winsor Staffing, employed Doe at all times relevant hereto. This Defendant has a registered office address and principal place of business at 104 North Centre St., Pottsville, PA 17901.
4. This Court has subject-matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. § 1331 because the claims present a federal question.

5. Venue is proper because, at all times relevant hereto, Plaintiff was employed within this District, where the unlawful employment practices were committed.

6. Plaintiff filed a timely Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”), received a Notice of Right-to-Sue attached hereto as Exhibit “A,” and has satisfied all administrative prerequisites to bringing suit.

II. MATERIAL FACTS

7. Plaintiff identifies as openly gay.

8. Plaintiff began employment with Defendants in January 2020 .

9. Winsor Staffing assigned Plaintiff to work at the Environmental Stoneworks location at 98 Pheasant Run Road, Orwigsburg, PA 17961.

10. During his employment with Defendants, Plaintiff routinely heard coworkers refer to him as a “f*****” – a slur for gay men – a “bitch” and as a “maricon”, which is a Spanish language slur for gay men.

11. Plaintiff reported his concerns about sexual-orientation discrimination/harassment to Alpha Mills and Winsor Staffing. Despite Plaintiff’s efforts, neither Alpha Mills nor Winsor Staffing provided prompt action to prevent, correct, and remedy the harassing situation at the worksite.

12. Plaintiff complained to Environmental Stoneworks Production Supervisor Delwin Fernandez about the harassment he experienced.

13. Despite Plaintiff’s complaint, Environmental Stoneworks failed to take remedial action.

14. Plaintiff also complained to Winsor Staffing Operations Coordinator Corrina Harris.

15. Despite Plaintiff's complaint, Winsor Staffing failed to take remedial action.

16. Plaintiff's partner of the same sex, Joshua Hernandez, who also worked for Winsor Staffing, had similarly made a recent complaint to Ms. Harris. Hernandez later received a Facebook message from coworker Spencer Lee Wengerd, who stated about Ms. Harris, " Fucked up part is carina knew this was happening to [Hernandez] and flat out said if he didn't wanna be made fun of that he shouldn't be dying his hair all kinds of colors and shouldn't be so open (basic just of what she was saying)." [sic]

17. Given the severe and harassing conduct he endured, and Defendants failure to take remedial action, Plaintiff was compelled to terminate his employment on or about February 15, 2020.

III. CLAIMS FOR RELIEF

COUNT I: **HARASSMENT BASED ON SEX AND/OR SEXUAL ORIENTATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq.** **(Plaintiff v. All Defendants)**

18. All of the foregoing paragraphs are hereby incorporated as if the same were more fully set forth herein at length.

19. Plaintiff identifies as openly gay.

20. Each Defendant employed fifteen (15) or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

21. Plaintiff's coworkers referred to Plaintiff as a "f*****t," "f**," "bitch," and "maricon," which is a Spanish slur for a gay man.

22. Plaintiff's coworkers intended to harass Plaintiff on account of Plaintiff's sexual orientation.

23. This conduct was severe and/or pervasive, and unreasonably interfered with Plaintiff's working environment.

24. Plaintiff verbally complained to supervisors, Winsor Staffing's Operations Supervisor Carina Harris and Environmental Stonework's Delwin Fernandez, who did not provide action in response.

WHEREFORE, Plaintiff demands judgment in their favor and against Defendants including for damages for any and all actual damages, lost wages, commissions, overtime, bonuses, and benefits; compensatory damages for physical pain, emotional pain and suffering, mental anguish, anxiety, depression, humiliation, embarrassment, and emotional distress; punitive damages; pre- and post-judgment interest; reasonable attorneys' fees; costs of suit; and expert witness fees.

COUNT II:

DISPARATE TREATMENT/TERMINATION BASED ON SEX AND/OR SEXUAL ORIENTATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. § 2000e, et seq.
(Plaintiff v. All Defendants)

25. All of the foregoing paragraphs are hereby incorporated as if the same were more fully set forth herein at length.

26. On February 15, 2020 Plaintiff was compelled to quit his employment on account of severe and/or pervasive harassment at his work place, and due to Defendants' failure to remedy this harassment after being notified of its occurrence.

WHEREFORE, Plaintiff demands judgment in their favor and against Defendants including for damages for any and all actual damages, lost wages, commissions, overtime, bonuses, and benefits; compensatory damages for physical pain, emotional pain

and suffering, mental anguish, anxiety, depression, humiliation, embarrassment, and emotional distress; punitive damages; pre- and post-judgment interest; reasonable attorneys' fees; costs of suit; and expert witness fees.

COUNT III:

**RETALIATION IN VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF
1964, 42 U.S.C. § 2000e, et seq.
(Plaintiff v. All Defendants)**

27. All of the foregoing paragraphs are hereby incorporated as if the same were more fully set forth herein at length.

28. Plaintiff identifies as openly gay.

29. Each Defendant employed fifteen (15) or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

30. Plaintiff engaged in protected conduct when he complained to Defendants about working on a hostile workplace.

31. Defendants retaliated against Plaintiff because he made these complaints.

32. Winsor Staffing refused to provide Plaintiff with any further work assignments.

WHEREFORE, Plaintiff demands judgment in their favor and against Defendants including for damages for any and all actual damages, lost wages, commissions, overtime, bonuses, and benefits; compensatory damages for physical pain, emotional pain and suffering, mental anguish, anxiety, depression, humiliation, embarrassment, and emotional distress; punitive damages; pre- and post-judgment interest; reasonable attorneys' fees; costs of suit; and expert witness fees.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiff, Justin Moser, demands judgment in his favor and against Defendants for:

A. Actual and compensatory damages including, but not limited to, restitution, expectation damages, consequential damages, back pay, lost wages, and lost benefits, lost future wages or front pay, lost future earning capacity, economic loss, physical pain, pain and suffering, mental anguish, and severe emotional distress;

B. Punitive damages for Defendants' evil motive and reckless indifference to Plaintiffs' rights.

C. Reasonable attorneys' fees, costs of suit, and expert witness fees, with respect to Plaintiff's claims.

D. Any other further relief this Court deems just, proper, and equitable.

JURY DEMAND

Plaintiff hereby requests a trial by jury of eight (8) members on all counts so triable.

Respectfully submitted,

LAW OFFICES OF ERIC A. SHORE, P.C.

DATED: 7/27/21

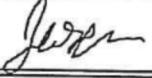
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VERIFICATION

I hereby verify that the statements contained in this complaint are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of 18 P.A.C.S. § 4904, relating to unsworn falsification to authorities.

07/27/2021

(Date Signed)



(Sign)
Justin Moser